

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

BAA INTERNATIONAL, LLC

and

Case 25-RC-10275

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, UAW<sup>1</sup>

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held April 25, 2005, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.<sup>2</sup>

I. ISSUE

The Petitioner seeks an election within a unit comprised of the approximately 37 police officers employed by the Employer at its 2500 South High School Road, Indianapolis, Indiana office, who work at the Indianapolis International Airport. The Employer contends that its police officers are guards within the meaning of Section 9(b)(3) of the Act, and therefore the Petitioner,

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<sup>1</sup> The name of the Petitioner has been corrected to reflect its full legal name.

<sup>2</sup> Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The labor organization involved claims to represent certain employees of the Employer.

d. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

which admittedly admits to membership employees other than guards, is precluded from representing the police officers by Section 9(b)(3). The Petitioner contends that the police officers, by virtue of their policing authority, are not guards within the meaning of Section 9(b)(3).

## II. DECISION

For the reasons discussed in detail below, it is concluded that the petitioned-for employees are guards within the meaning of Section 9(b)(3) of the Act. Thus, the Petitioner, which admits to membership employees other than guards, is precluded from representing the petitioned-for employees. Based thereon, the petition is dismissed.

### A. Statement of Facts

BAA International, LLC, herein called the Employer, provides airport management services for the Indianapolis Airport Authority at the Indianapolis International Airport, herein called the Airport, and for various surrounding municipal airports/heliports. The Employer employs approximately 475 employees to fulfill its contractual obligations at the Airport which include law enforcement, fire prevention, maintenance, custodial, parking lot attending, public relations, marketing, finance, human resources, and other services. Indiana state statute gives the Airport Authority the power to contract with the Employer to provide law enforcement personnel responsible for enforcing state, federal and aviation laws on Airport property, and BAA provides such services 24 hours per day.

In its law enforcement department, the Employer employs approximately 3 security specialists, 70 public safety officers, and 37 police officers.<sup>3</sup> The Petitioner, which admittedly represents non-guard employees, is seeking to represent the police officers, which the Employer contends are guards within the meaning of Section 9(b)(3) of the Act.

The Employer's police officers are more highly trained and have more authority than may be typically associated with security guards. The police officers are required to be certified by the Indiana Law Enforcement Academy or a reciprocal institution, and Indiana state statute confers arrest powers upon the Employer's police officers. The officers wear utility belts on which they carry firearms, ammunition, handcuffs, radios, and in some cases nightsticks. The

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<sup>3</sup> Although some interchange of duties occurs among these three positions, the position of the Petition that it is only interested in representing a unit comprised of employees who occupy police officer positions makes it unnecessary to address the other two positions in detail. The security specialists guard access doors to secured areas. Public safety officers primarily deal with traffic control, crowd control, checking baggage and checking the identification of people entering restricted areas. Public safety officers may perform some of the duties of the police officers such as perimeter searches and perimeter patrols if staffing levels and circumstances require extra personnel to perform these tasks.

officers have access to police vehicles based upon their work assignments and wear police-style uniforms including a metal identification badge. All of the police officers possess the authority to place persons under arrest, including other employees of the Employer, who have allegedly violated local, state, federal and aviation laws on Airport property. In contrast, the public safety officers and security specialists are not permitted to carry weapons, handcuffs, or chemical spray.

The primary responsibility of the police officers is to ensure the safety and security of property and personnel of the private businesses and governmental agencies which conduct business at the Airport, as well as the public who interact with these businesses and agencies. In performing these functions, the police officers also ensure the safety and security of the Employer's property at the Airport and other employees who work at the Airport.

There are three job titles within the police officer classification: patrol officer, canine officer, and investigator. Although most of their duties are interchangeable, each position encompasses somewhat different responsibilities. The patrol officers routinely patrol the perimeter of the Airport, the inside of the terminal, and exterior areas of the Airport where they investigate hazardous or suspicious situations. Patrol officers also respond to emergency calls generated on Airport property such as personal or property injury, traffic accidents, public intoxication, industrial accidents, domestic disputes, crimes in progress, and security breaches. The patrol officers also direct traffic and issue parking tickets. The investigators investigate possible crimes, complete arrest reports, and provide backup assistance to other law enforcement agencies. The canine officers work with a canine partner that is trained in bomb detection to patrol the Airport for explosives.

Persons who occupy the three police officer classifications respond to security breach alarms; handle incidents of threats or actual violence, trespassing, prohibited possession of firearms; and conduct surveillance of the general public, employees of the Employer, and other businesses at the Airport to ensure that no laws or airport policies are broken. Their duties also include assisting the Employer in enforcing against its own employees several of the rules of conduct contained in its employee handbook, including rules prohibiting theft, fraud, working under the influence of drugs or alcohol, possession or distribution of illegal drugs or alcohol, operating an Employer owned vehicle under the influence, fighting, and the possession of unauthorized explosives or firearms. The police officers' duties include monitoring and if necessary controlling picketing and strike activity on Airport property.<sup>4</sup> The police officers execute the above-described duties regardless of whether the individuals involved are employees of the Employer, employees of other businesses located at the Airport, or members of the public utilizing the Airport.

The Employer's law enforcement department is structured much like a typical law enforcement agency. Its highest ranking member of management is its Chief of Police who has overall responsibility for all security specialists, public safety officers, and police officers. An Operations Commander and Security Systems Specialist report directly to the Chief, and rank-

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<sup>4</sup> Picketing on Airport property is allowed in accordance with permits issued by the Employer's Chief of Police.

and-file officers are supervised by persons who occupy the ranks of Major, Captain, Lieutenant, and Sergeant.<sup>5</sup>

## B. Discussion

Section 9(b)(3) of the Act prohibits the Board from certifying a labor organization “as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” The legislative history demonstrates that the purpose of Section 9(b)(3) is to prevent situations where a guard's loyalty to fellow union members might conflict with his duty to report employee infractions to his employer. See New England Tank Cleaning Company, 161 NLRB 1474 (1966). Section 9(b)(3) defines a guard as “any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.” The Board has found that the statutory definition of a guard includes employees who enforce rules and protect the property of an employer other than their own, such as a contractor who supplies guards to perform services for another employer. See American District Telegraph Co., 160 NLRB 1130 (1966).

From the inception of Section 9(b)(3), guard functions have been likened to policing duties. See Douglas Aircraft Company, Inc., 79 NLRB 752 (1948) (holding that the employer’s uniformed policemen were guards); General Electric Company, 85 NLRB 1316 (1949) (holding that the employer’s armed and deputized patrolmen were guards). Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitoring and control of access to the employer’s premises; and the wearing of guard-type uniforms or displaying other indicia of guard status. The Boeing Company, 328 NLRB 128, 130 (1999), and cases cited therein.

In the present case, the responsibilities of the police officers outlined above are undisputed. The Petitioner does not contend that the Employer’s description of the police officers’ functions is inaccurate. Instead, the Petitioner contends that the police officers are not guards within the meaning of the Act, because they possess police training, arrest powers, and responsibilities in addition to the duties and authority possessed by the security specialists and public safety officers, and because employees in these latter classifications perform guard duties. Whether or not the security specialists and public safety officers are guards under the Act, the functions performed by the Employer’s police officers fall squarely within the definition of a guard. The police officers’ duties, described above, include all of the responsibilities listed as indicia of guard status by the Board in the Boeing Company case. *Id.* Furthermore, as discussed above, the police officers’ duties include surveilling and controlling employee and non-employee

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<sup>5</sup> In view of the finding herein that no election shall be conducted, it is not necessary to make determinations concerning the supervisory status of these or other individuals.

picketing and strike activities. Clearly, if the police officers' are represented by a union that admits non-guards to its membership, the potential exists for a conflict to arise between the police officers' loyalties to fellow union members and their employer.

The circumstances of this case are strikingly similar to those in the General Electric Company, Supra. In General Electric the employer contracted with the Atomic Energy Commission to operate an atomic energy complex, including an employee village that was associated with the complex. The issue in that case was whether the employer's patrolmen who policed the employee village were "guards." The uniformed patrolmen were deputized, armed, and charged with the protection of the property and people within the village area. The patrolmen also had the authority to enforce the employer's rules and those of the Atomic Energy Commission, in addition to the laws of the county and state in which the village was located. The Board found that the patrolmen were clearly guards within the meaning of the Act. Similarly in this case, the uniformed and armed police officers possess the authority to enforce the Employer's rules and the laws of local, state, and federal government for the protection of Airport property and people on that property.

The finding herein that the Employer's police officers are guards within the meaning of the Act in no way diminishes their stature. The term "guard" as used in the Act includes both deputized and armed police officers as well as persons with lesser security powers. By virtue of the heightened need for security at airports, it is clearly necessary for airports to employ more highly trained security personnel than many other employers. Contrary to the Petitioner's assertion that the police officers' heightened training, authority and responsibilities remove them from the coverage of Section 9(b)(3), these factors would be just as likely to create a conflict of interest with co-workers if the officers are represented by the same union which represents the co-workers.

### III. ORDER

Based upon the undisputed functions performed by members of the petitioned unit, it is concluded that the Employer's police officers are guards within the meaning of Section 9(b)(3) of the Act. The Petitioner is therefore precluded from representing the officers, because the Petitioner also represents non-guards. Accordingly, the Petition in this case is dismissed.

### IV. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request

for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by **May 20, 2005**.

SIGNED at Indianapolis, Indiana, this 6th day of May 2005.

/s/ Rik Lineback

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